

**Appendix D to DIR-SDD-1925**

**AWS, Inc.**

**AND**

**Customer**

**SERVICES AND EQUIPMENT AGREEMENT**

This AWS, Inc. and Customer SERVICES AND EQUIPMENT AGREEMENT is entered into by and between AWS Inc. with its principal place of business at 4402 South Congress, Suite 203, Austin, Texas 78745, and Customer whose principal place of business is:

For valuable consideration, the parties known as AWS Inc., hereinafter referred to as AWS and Customer, hereinafter referred to as Customer as agree as follows:

- 1. EQUIPMENT.** AWS will sell and Customer will purchase the equipment ("Equipment"), consisting of hardware, software, installation, and if applicable, maintenance services and/or manufacturer provided items according to the terms and conditions of DIR Contract No. DIR-SDD-1925 and this agreement.
- 2. PRICE AND PAYMENT TERMS** Payment shall be in accordance with Section 6.C. of Appendix A to DIR Contract No. DIR-SDD-1925.
- 3. INSTALLATION.**

**3.1.1 AWS Installed Equipment.**

- A.** Customer will give AWS employees or agents reasonable access to premises and facilities where the equipment is located or is to be installed at Customer's regular business hours and at other times subject to prior notice to allow AWS to fulfill its obligations in this agreement. Customer agrees that it will obtain all necessary permissions from the proprietors or managers of site(s) where equipment is to be installed. And will obtain reasonable access to the areas where the equipment is located or to be installed. AWS agrees that it will perform cable pulls and antenna installations in common areas of the site(s) between the hours of 8:00 AM and 6 PM. AWS will perform other activities such as testing and equipment configuration during the regular business hours of the site(s) so long as such activities will not adversely distract public invitees in the common areas.
- B.** During the period of installation and throughout the warranty or maintenance period, **Customer will:**
  - (1)** Guarantee and warrant that the premises in which the work is to be performed are completely free of asbestos (whether encapsulated or exposed), or other hazardous materials as defined by federal or state law. If the warranty or guarantee cannot be made prior to signing this agreement, AWS will have the following options in addition to any other legal or equitable remedies: (a) void this agreement, and retain any

down payment previously paid by Customer; (b) decline to make any equipment installations in areas known or suspected of containing asbestos; or (c) unilaterally make an adjustment to the purchase price to reflect any increased costs of performance because of known or suspected asbestos on the premises.

- (2) Provide necessary openings and ducts for cable and conductors in floors and walls, and floor plans and/or prints showing the location of the openings and ducts. The floor plan and/or prints will also show the locations and types of Equipment to be installed.
  - (3) Obtain any necessary consents, approvals, licenses, and permits for installation of the Equipment on the premises where the Equipment is **to be installed during all hours consistent with the requirements of installation**. Be responsible for and provide or arrange for all ground wire connections to Customer's premises, separate electric source, circuits and power with suitable outlets, as necessary, at its own expense; suitable space meeting operating environment requirements; heat, air conditioning, light, and security and other operating environmental requirements for the Equipment. The premises must be dry and free from dust and in the condition as to not be injurious to the Equipment or the employees, agents, subcontractors or assignees of AWS.
- C. Customer acknowledges that foreign voltages and lightning effects on telephone and data equipment can be significant during electrical storms. AWS will not be liable for any damages to the Equipment or claims associated therewith caused by lightening or suspected to be caused by lightening.
- D. Customer acknowledges that any change in Equipment type or location may change the quoted price. The additional charges will be in accordance with the pricing set forth under DIR contract no. DIR-SDD-1925.

**3.2 Drop Ship Equipment.** Shipping shall be in accordance with DIR contract no. DIR-SDD-1925, Section 4.E. Shipping and Handling Fees. Customer understands that failure to perform installation or maintain the premises consistent with manufacturer's specifications may void any warranty on the Equipment.

#### **4. LIMITED WARRANTY, DISCLAIMERS AND REMEDIES.**

##### **4.1 Warranty Term and Scope.**

- 4.1.1 **AWS Installed.** Unless otherwise noted in DIR contract no. DIR-SDD-1925, this Agreement or the AWS statement of work, all data/internetworking Equipment (including controller boxes, hubs, power over Ethernet devices, routers, and switches) sold and installed by AWS under this Agreement is warranted against defects in design, material and workmanship under normal and proper use for a period of 90 days from the Acceptance Date below. The corresponding warranty for all Other Equipment, will be one year from the Acceptance Date exclusive of any associated software or other software product, which shall be warranted for a period of 90 days from the date of installation. In the event AWS installs equipment that has a longer warranty provided by the manufacturer, (longer than 90 days) that warranty period will be passed along to Customer. It will be the responsibility of the Customer to fill out any registration cards, or other warranty related items, that are to be forwarded to the manufacturer to begin the warranty period. If no warranty cards are

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present, Customer will use due diligence to contact the manufacturer via U.S. Postal mail, or manufacturers web site to complete the warranty information required. Customer should make a copy of any and all registration materials so as to prove compliance. AWS's obligation under this warranty is limited to the repair or replacement of Equipment found to be defective according to manufacturer's specifications under normal and proper use.

- 4.1.2 **Drop Ship.** Drop Ship Equipment is warranted for 90 days from the shipment date for parts only. During the warranty period, AWS will replace defective parts only on an exchange basis.
- 4.1.3 THIS WARRANTY IS IN LIEU OF ANY OTHER WARRANTY OBLIGATION OR LIABILITY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

#### **4.2 Warranty Services.**

- A. AWS Installed.** AWS will provide warranty service at the installation address, including parts and labor required to service the Equipment. The warranty service does not include replacement parts for lost or stolen parts, or items damaged by negligence, acts of God, or causes other than ordinary use, nor does it include additions to, rearrangements, relocation or removal of the Equipment. Any maintenance or service performed by the Customer or anyone not approved in writing by AWS will cause this warranty to become null and void.
- B. Drop Ship.** Customer must contact AWS to receive a Call Tag number or RMA with specific instructions prior to shipping the Equipment back to AWS. AWS will ship replacement part(s) or Equipment back to Customer if the Equipment is under warranty. If AWS determines that the warranty has expired, Customer may (1) accept the return of the part or the Equipment as is; (2) request that the part or the Equipment be repaired at Customer's expense; or (3) request that a replacement part or Equipment be shipped to Customer at Customer's expense. If Customer requests a site visit by AWS for repair, Customer will be billed for all parts (if out of warranty) and labor associated with the repair, in accordance with the pricing set forth in DIR Contract No. DIR-SDD-1925.

**4.3 CUSTOMER IS SOLELY RESPONSIBLE FOR ENSURING THE COMPATIBILITY OF ANY EQUIPMENT NOT ACQUIRED FROM AWS THAT IS ADDED TO OR USED IN CONJUNCTION WITH THE EQUIPMENT PROVIDED BY AWS. THE COMBINATION AND USE OF NON-COMPATIBLE EQUIPMENT WILL, AT THE OPTION OF AWS, VOID ANY REMAINING WARRANTY AS TO ANY ITEM OF AWS-PROVIDED EQUIPMENT THAT IS AFFECTED BY THE NON-COMPATIBLE EQUIPMENT.**

- 5. INDEMNIFICATION.** Indemnification shall be in accordance with Section 9.A. of Appendix A to DIR Contract No. DIR-SDD-1925.
- 6. LIMITATION OF LIABILITY. LIMITATION OF LIABILITY SHALL BE IN ACCORDANCE WITH SECTION 8.K OF DIR CONTRACT NO DIR-SDD-1925.**
- 7. ASSIGNMENT** Assignments shall be in accordance with Section 3.D. of Appendix A to DIR Contract No. DIR-SDD-1925.
- 8. WAIVER OF BREACH.** No waivers, whether expressed or implied, by either party of any breach by the other party of any of the covenants, agreements, conditions or duties of this

Agreement will operate as a waiver of any subsequent breach of the same covenants, agreements, conditions or duties.

9. **ENTIRE AGREEMENT.** DIR Contract No. DIR-SDD-1925 and this Agreement are the complete and exclusive state of the agreement between the parties which supersedes all proposals or prior agreements, whether oral or written, and all other communications between the parties relating to the subject matter of the Agreement. In the event of a conflict between this Agreement and DIR Contract No. DIR-SDD-1925, the DIR Contract controls.

**10. MISCELLANEOUS.**

**10.1 Purchase Orders.** Any purchase order or terms contained in a P.O. or other order document issued by **Customer will be deemed to have been issued for its own purchasing, accounting, and other record keeping purposes only and will not be considered part of this Agreement.**

**10.2 Force Majeure.** Force Majeure shall be in accordance with Section 9C. of Appendix A to DIR Contract No. DIR-SDD-1925.

**10.3 Notices.** Notices shall be in accordance with Section 10.A to DIR Contract DIR-SDD-1925.

**10.4 Risk of Loss.** Risk of loss of the Equipment will pass from AWS to Customer upon delivery to the installation site designated on page 1 hereof.

**10.5 Title.** Title to the Equipment will pass from AWS to Customer upon Customer's payment of the Total Equipment Purchase Price and any applicable taxes of the Equipment.

**10.6 Third Party Beneficiary.** This Agreement will not be construed or interpreted to create any direct, indirect or third party rights or benefits whatsoever in favor of any person or entity of any kind between any persons or entities other than the AWS and Customer.

**IN WITNESS WHEREOF,** the duly authorized representatives of the parties, AWS, Inc. and Customer, have executed this agreement to be effective on the date of the last party to sign.

For AWS, Inc.

Signed: \_\_\_\_\_

Printed: \_\_\_\_\_

Date: \_\_\_\_\_

For Customer

Signed: \_\_\_\_\_

Printed: \_\_\_\_\_

Date: \_\_\_\_\_